UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

EVAN LEVITAN, Derivatively on Behalf of MODERNA, INC., Plaintiff, v. STÉPHANE BANCEL, NOUBAR B. AFEYAN, STEPHEN HOGE, JAMES M. MOCK, ELIZABETH NABEL, PAUL SAGAN, FRANÇOIS NADER, SANDRA HORNING, ELIZABETH TALLETT, ROBERT LANGER, and STEPHEN BERENSON, Defendants, -and- MODERNA, INC., a Delaware Corporation, Nominal Defendant.	No. DEMAND FOR JURY TRIAL

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT FOR VIOLATIONS OF SECURITIES LAW, BREACH OF FIDUCIARY DUTY, WASTE OF CORPORATE ASSETS, AND UNJUST ENRICHMENT

Plaintiff, by his attorneys, submits this Verified Stockholder Derivative Complaint for Violations of Securities Law, Breach of Fiduciary Duty, Waste of Corporate Assets, and Unjust Enrichment. Plaintiff alleges the following on information and belief, except as to the allegations specifically pertaining to plaintiff which are based on personal knowledge. This Complaint is also based on the investigation of plaintiff's counsel, which included, among other things, a review of

public filings with the U.S. Securities and Exchange Commission ("SEC") and a review of news reports, press releases, and other publicly available sources.

NATURE AND SUMMARY OF THE ACTION

1. This is a stockholder derivative action brought by plaintiff on behalf of nominal defendant Moderna, Inc. ("Moderna" or the "Company") against certain of its officers and directors for breach of fiduciary duties, waste of corporate assets, unjust enrichment, and violations of law. These wrongs resulted in significant damages to Moderna, including a $1.1 billion repurchase of Company stock while it was artificially inflated. Additionally, Moderna's reputation, goodwill, and standing in the business community have been damaged, and the Company is now exposed to potential liability for violations of state and federal law.

2. Moderna is a biotechnology company that discovers, develops, and commercializes messenger Ribonucleic Acid ("mRNA") therapeutics and vaccines for the treatment of infectious diseases, immuno-oncology, rare diseases, autoimmune diseases, and cardiovascular diseases in the United States, Europe, and internationally. The Company's products include mRESVIA ("mRNA-1345"), an mRNA respiratory syncytial virus ("RSV") vaccine, intended to protect adults aged sixty years and older from lower respiratory tract disease caused by RSV infection.

3. In July 2023, Moderna initiated a rolling submission of a Biologics License Application ("BLA")[1] to the U.S. Food and Drug Administration ("FDA") for real-time review of mRNA-1345 backed by late-stage data, which indicated a vaccine efficacy rate[2] of 83.7% as

[1] The BLA is a request for permission to introduce, or deliver for introduction, a biologic product into interstate commerce (21 C.F.R. §601.2).

[2] A vaccine's efficacy is measured in a controlled clinical trial and is based on how many people who got vaccinated developed the "outcome of interest" (usually disease) compared with how many people who got the placebo (dummy vaccine) developed the same outcome.

defined by two or more RSV symptoms related to the lower respiratory tract. A rolling submission allows a company to submit completed sections of the BLA for review by the FDA before all sections of the BLA are available.

4. Beginning January 17, 2023, the Individual Defendants (as defined herein) disseminated statements touting mRNA-1345's vaccine efficacy rate and repeatedly stated that it was 83.7%. Additionally, the Individual Defendants either made or caused the Company to make statements touting mRNA-1345's commercial prospects. Unfortunately, these statements were materially false and misleading.

5. On May 31, 2024, Moderna issued a press release "announc[ing] that the [FDA] has approved mRESVIA (mRNA-1345) ... to protect adults aged 60 years and older from lower respiratory tract disease caused by RSV infection." However, the Company's press release indicated a vaccine efficacy of only 78.7%, significantly lower than the 83.7% vaccine efficacy that the Individual Defendants touted. Following the press release, analysts and news outlets were quick to note mRNA-1345's lower-than-expected efficacy rate. For instance, *Reuters* published an article titled "US FDA Approves Moderna's RSV Vaccine with Lower-than-Expected Efficacy in Its Label."

6. In the wake of the Company's press release, Moderna's stock plunged more than 5.9%, or $8.94 per share on May 31, 2024, to close at $142.55 per share compared to the previous trading day's closing of $151.49 per share, erasing over $3.4 billion in market capitalization.

7. The truth fully emerged on June 26, 2024, when the Company presented before the U.S. Centers for Disease Control and Prevention's ("CDC") Advisory Committee on Immunization

Practices ("ACIP").[3] During the presentation, Moderna revealed that after eighteen months, mRNA-1345 proved only 49.9% to 50.3% effective against multiple symptoms of lower respiratory tract disease, which fell significantly lower than the efficacy rate for vaccines produced by the Company's competitors.

8. Media outlets again responded negatively to these disclosures. For example, *Reuters* issued an article titled "Moderna Says Its RSV Shot Is 50% Effective Across a Second Season." In the wake of the June 26, 2024 presentation, Moderna's stock plunged by more than 15.7%, or $21.65 per share, for four days until July 1, 2024, to close at $115.95 per share compared to the closing on June 25, 2024, of $137.60 per share, erasing over $8.3 billion in market capitalization.

9. Before the Company's stock price plummeted, the Insider Selling Defendants (as defined herein) dumped over $399 million worth of their personally held Moderna stock at artificially inflated prices. Notably, the Company's Chief Executive Officer ("CEO"), defendant Stéphane Bancel ("Bancel") and Moderna's President, defendant Stephen Hoge ("Hoge") personally made the materially false and misleading statements while collectively dumping $295.3 million in Moderna stock.

10. Additionally, the Individual Defendants breached their fiduciary duties by causing Moderna to repurchase its own stock at artificially inflated prices due to the materially false and misleading statements. Between January 2023 and June 2024, Moderna repurchased

[3] The ACIP provides advice and guidance to the Director of the CDC regarding use of vaccines and related agents for control of vaccine-preventable diseases in the civilian population of the United States. Recommendations made by the ACIP are reviewed by the CDC Director and, if adopted, are published as official CDC/U.S. Department of Health and Human Services recommendations in the Morbidity and Mortality Weekly Report.

approximately eight million shares of common stock, costing the Company over $1.1 billion. As Moderna's stock was actually worth only $115.95 per share, the price at which it was trading when the market closed on July 1, 2024, the Company overpaid for repurchases of its own stock by over $218.6 million in total.

11. Further, as a direct result of this unlawful course of conduct, Moderna is now the subject of a federal securities class action lawsuit filed in the U.S. District Court for the District of Massachusetts on behalf of investors who purchased Moderna's shares, *Wentz v. Moderna, Inc. et al.*, Case No. 1:24-cv-12058-IT (the "Securities Class Action").

JURISDICTION AND VENUE

12. Pursuant to 28 U.S.C. §1331 and section 27 of the Securities Exchange Act of 1934 (the "Exchange Act"), this Court has jurisdiction over the claims asserted herein for violations of sections 10(b) and 14(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder. This Court has supplemental jurisdiction over the remaining claims under 28 U.S.C. §1367.

13. This Court has jurisdiction over each defendant named herein because each defendant is either a corporation that conducts business in and maintains operations in this District, or is an individual who has sufficient minimum contacts with this District to render the exercise of jurisdiction by the District courts permissible under traditional notions of fair play and substantial justice.

14. Venue is proper in this Court in accordance with 28 U.S.C. §1391 because: (i) Moderna maintains its principal place of business in this District; (ii) one or more of the defendants either resides in or maintains executive offices in this District; (iii) a substantial portion of the transactions and wrongs complained of herein, including the defendants' primary participation in the wrongful acts detailed herein, and aiding and abetting and conspiracy in

violation of fiduciary duties owed to the Company, occurred in this District; and (iv) defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

THE PARTIES

Plaintiff

15. Plaintiff Evan Levitan was a stockholder of Moderna at the time of the wrongdoing complained of, has continuously been a stockholder since that time, and is a current Moderna stockholder.

Nominal Defendant

16. Nominal defendant Moderna is a Delaware corporation with principal executive offices located at 325 Binney Street, Cambridge, Massachusetts. Moderna develops therapeutics medicines and vaccines for infectious diseases, immune-oncology, rare diseases, and autoimmune diseases using the proprietary mRNA platform. Moderna's first commercial product, Spikevax®, is a vaccine designed to immunize patients against SARS-CoV-2, the virus which causes the Coronavirus Disease of 2019 ("COVID-19"). The Company is also developing vaccines against seasonal flu, RSV, cytomegalovirus, Epstein-Barr virus, and other viruses with unmet or underserved needs. As of December 31, 2023, Moderna had approximately 5,600 full-time employees.

Defendants

17. Defendant Bancel has been Moderna's CEO since October 2011, and a director since March 2011. Defendant Bancel is named as a defendant in the related Securities Class Action that alleges he violated sections 10(b) and 20(a) of the Exchange Act. While in possession of material, nonpublic information concerning the Company's true business health, defendant Bancel

sold 1,867,155 shares of his personally held Moderna stock for $273,830,000.35 in proceeds. Moderna paid defendant Bancel the following compensation as an executive:

Year	Salary	Non-Equity Incentive Plan Compensation	Stock Awards	Option Awards	All Other Compensation	Total
2023	$1,563,462	$1,913,625	$3,129,194	$9,387,713	$1,074,520	$17,068,514

18. Defendant Noubar B. Afeyan ("Afeyan") has been Moderna's Chairman of the Board of Directors (the "Board") since February 2012 and a director since 2010. Defendant Afeyan co-founded the Company in 2010. Defendant Afeyan was a member of Moderna's Product Development Committee from at least March 2022 to at least March 2023, and a member of the Science and Technology Committee since at least March 2023. While in possession of material, nonpublic information concerning the Company's true business health, defendant Afeyan sold 797,832 shares of his personally held Moderna stock for $103,702,339.72 in proceeds. Moderna paid defendant Afeyan the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Option Awards	All Other Compensation	Total
2023	$150,000	$381,269	$132,250	$663,519

19. Defendant Hoge has been Moderna's President since February 2015. Defendant Hoge was also Moderna's Senior Vice President, Corporate Development, New Drug Concepts, Oncology from January 2013 to February 2015. Defendant Hoge is named as a defendant in the related Securities Class Action that alleges he violated sections 10(b) and 20(a) of the Exchange Act. While in possession of material, nonpublic information concerning the Company's true business health, defendant Hoge sold 195,000 shares of his personally held Moderna stock for $21,559,350 in proceeds. Moderna paid defendant Hoge the following compensation as an executive:

Year	Salary	Non-Equity Incentive Plan Compensation	Stock Awards	Option Awards	All Other Compensation	Total
2023	$1,042,308	$850,500	$2,711,792	$2,711,966	$22,600	$7,339,166

20. Defendant James M. Mock ("Mock") has been Moderna's Chief Financial Officer since September 2022. Defendant Mock is named as a defendant in the related Securities Class Action that alleges he violated sections 10(b) and 20(a) of the Exchange Act. Moderna paid defendant Mock the following compensation as an executive:

Year	Salary	Non-Equity Incentive Plan Compensation	Stock Awards	Option Awards	All Other Compensation	Total
2023	$792,308	$583,200	$1,460,282	$1,460,295	$21,100	$4,317,185

21. Defendant Elizabeth Nabel ("Nabel") has been a Moderna director since December 2015. Defendant Nabel has been Chair and a member of Moderna's Science and Technology Committee since at least March 2024, and a member of the Product Development Committee since at least March 2022. Moderna paid defendant Nabel the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Option Awards	Total
2023	$95,000	$95,262	$285,983	$476,245

22. Defendant Paul Sagan ("Sagan") has been a Moderna director since June 2018. Defendant Sagan has been a member of Moderna's Audit Committee since at least March 2022. Moderna paid defendant Sagan the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Option Awards	Total
2023	$80,000	$381,269	$461,269

23. Defendant François Nader ("Nader") has been a Moderna director since December 2019. Defendant Nader has been a member of Moderna's Product Development Committee since at least March 2022, and a member of the Science and Technology Committee since at least March

2023. Defendant Nader was also the Chair of Moderna's Science and Technology Committee in at least March 2023. Moderna paid defendant Nader the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Option Awards	Total
2023	$100,000	$381,269	$481,269

24. Defendant Sandra Horning ("Horning") has been a Moderna director since April 2020. Defendant Horning has been the Chair and a member of Moderna's Product Development Committee since at least March 2022, and a member of the Science and Technology Committee since at least March 2023. Moderna paid defendant Horning the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Option Awards	Total
2023	$100,000	$381,269	$481,269

25. Defendant Elizabeth Tallett ("Tallett") has been a Moderna director since July 2020. Defendant Tallett has been the Chair and a member of Moderna's Audit Committee since at least March 2022. Moderna paid defendant Tallett the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Option Awards	Total
2023	$100,000	$381,269	$481,269

26. Defendant Robert Langer ("Langer") has provided consulting services to Moderna since August 2024. Defendant Langer was also a Moderna director from December 2010 to August 2024. Defendant Langer co-founded the Company in 2010. Defendant Langer was a member of Moderna's Science and Technology Committee from at least March 2023 to August 2024. Moderna paid defendant Langer the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Option Awards	Total
2023	$80,000	$381,269	$461,269

27. Defendant Stephen Berenson ("Berenson") has provided consulting services to Moderna since August 2024. Defendant Berenson was also a Moderna director from October 2017 to August 2024. Defendant Berenson was a member of Moderna's Audit Committee from at least March 2022 to August 2024, and a member of the Product Development Committee from at least March 2024 to August 2024. Moderna paid defendant Berenson the following compensation as a director:

Fiscal Year	Fees Paid in Cash	Stock Awards	Option Awards	Total
2023	$90,000	$95,262	$285,983	$471,245

28. The defendants identified in ¶¶17, 19-20 are referred to herein as the "Officer Defendants." The defendants identified in ¶¶17-18, 21-27 are referred to herein as the "Director Defendants." The defendants identified in ¶¶22, 25, 27 are referred to herein as the "Audit Committee Defendants." The defendants identified in ¶¶18, 21, 23-24, 27 are referred to herein as the "Product Development Committee Defendants." The defendants identified in ¶¶18, 21, 23-24, 26 are referred to herein as the "Science and Technology Committee Defendants." The defendants identified in ¶¶17-19 are referred to herein as the "Insider Selling Defendants." Collectively, the defendants identified in ¶¶17-27 are referred to herein as the "Individual Defendants."

DUTIES OF THE INDIVIDUAL DEFENDANTS

Fiduciary Duties

29. By reason of their positions as officers and directors of the Company, each of the Individual Defendants owed and owe Moderna and its stockholders' fiduciary obligations of care and loyalty, and were and are required to use their utmost ability to control and manage the Company in a fair, just, honest, and equitable manner. The Individual Defendants were and are

required to act in furtherance of the best interests of Moderna and not in furtherance of their personal interest or benefit.

30. To discharge their duties, the officers and directors of Moderna were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the financial affairs of the Company. By virtue of such duties, the officers and directors of Moderna were required to, among other things:

(a) disclose accurate vaccine efficacy rates for mRNA-1345;

(b) not repurchase Moderna's stock while it was artificially inflated;

(c) conduct the affairs of the Company in an efficient, business-like manner in compliance with all applicable laws, rules, and regulations so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, to not act in a manner that results in their personal unjust enrichment, and to maximize the value of the Company's stock; and

(d) remain informed as to how Moderna conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiry in connection therewith, and take steps to correct such conditions or practices and make such disclosures as necessary to comply with applicable laws.

Breaches of Duties

31. The conduct of the Individual Defendants complained of herein involves a knowing and culpable violation of their obligations as officers and directors of the Company, the absence of good faith on their part, and a reckless disregard for their duties to Moderna that the Individual Defendants were aware or reckless in not being aware posed a risk of serious injury to the Company.

32. The Individual Defendants breached their duty of loyalty by allowing defendants to cause, or by themselves causing, the Company to engage in making materially false and misleading statements, insider trading, and repurchasing Moderna's stock at artificially inflated prices, improper practices that wasted the Company's assets, and caused Moderna to incur substantial damage.

33. The Individual Defendants, because of their positions of control and authority as officers or directors of the Company, were able to and did, directly or indirectly, exercise control over the wrongful acts complained of herein. The Individual Defendants also failed to prevent the other Individual Defendants from taking such illegal actions. As a result, and in addition to the damage the Company has already incurred, Moderna has expended, and will continue to expend, significant sums of money.

Additional Duties of the Audit Committee Defendants

34. In addition to these duties, under its Charter in effect since February 9, 2022, the Audit Committee Defendants, defendants Sagan, Tallett, and Berenson, owed specific duties to Moderna to assist the Board in overseeing the Company's disclosures, risk assessment, and legal and regulatory compliance. Regarding Moderna's disclosures, the Audit Committee's Charter provides that the Audit Committee shall oversee the Company's press release, annual reports of Forms 10-K, and quarterly reports on Forms 10-Q, stating:

> ***The Audit Committee shall review and discuss with management (including the Company's Senior Accounting Executive) and with the independent auditors the Company's annual audited financial statements and related disclosures prior to the filing of the Company's Annual Report on Form 10-K***, including (a) all critical accounting policies and practices used or to be used by the Company, (b) the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations," and (c) any significant financial reporting issues that have arisen in connection with the preparation of such audited financial statements.

* * *

Based on the Audit Committee's review and discussions (1) with management of the audited financial statements, (2) with the independent auditors of the matters required to be discussed by AS 1301, and (3) with the independent auditors concerning the independent auditors' independence, ***the Audit Committee shall make a recommendation to the Board as to whether the Company's audited financial statements should be included in the Company's Annual Report on Form 10-K for the last fiscal year.***

* * *

The Audit Committee shall discuss with management and the independent auditors, prior to the filing of the Company's Quarterly Reports on Form 10-Q, (1) the Company's unaudited quarterly financial statements and the Company's related disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations," (2) such issues as may be brought to the Audit Committee's attention by the independent auditors pursuant to Statement on Auditing Standards No. 100, and (3) any significant financial reporting issues that have arisen in connection with the preparation of such financial statements.

Earnings Press Releases

The Audit Committee shall review and discuss the Company's earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies, including, in general, the types of information to be disclosed and the types of presentations to be made (paying particular attention to the use of "pro forma" or "adjusted" non-GAAP information).

35. The Audit Committee is also required to assess and manage the Company's exposure to risk. In particular, the Audit Committee Charter states:

Risk Assessment and Management

The Audit Committee shall discuss the guidelines and policies that govern the process by which the Company's exposure to risk is assessed and managed by management.

The Audit Committee shall exercise general oversight over the Company's information security and technology risks, including the Company's information security and related risk management programs.

In connection with the Audit Committee's discussion of the Company's risk assessment and management guidelines, the Audit Committee may discuss or consider the Company's major financial risk exposures and the steps that the

Company's management has taken to monitor and control such exposures.

36. The Audit Committee is required to oversee the Company's legal compliance. In particular, the Audit Committee Charter states:

> **Legal and Regulatory Compliance**
>
> The Audit Committee may discuss with management and the independent auditors, and review with the Board, the legal and regulatory requirements applicable to the Company and its subsidiaries and the Company's compliance with such requirements. After these discussions, the Audit Committee may, if it determines it to be appropriate, make recommendations to the Board with respect to the Company's policies and procedures regarding compliance with applicable laws and regulations.
>
> The Audit Committee may discuss with management legal matters (including pending or threatened litigation) that may have a material effect on the Company's financial statements or its compliance policies and procedures.

Additional Duties of the Product Development Committee Defendants

37. Under its Charter in effect since February 9, 2022, the Product Development Committee Defendants, defendants Afeyan, Nabel, Nader, Horning, and Berenson, owed specific duties to Moderna to assist the Board in overseeing the Company's "R&D and product development strategy, assets and pipeline and the progression of the Company's development programs." Additionally, the Product Development Committee oversees risk and the quality of Moderna's products. In particular, the Product Development Committee Charter states:

> **Oversight of R&D Strategy and Product Development Assets and Programs**
>
> * * *
>
> - ***the risks associated with the Company's R&D and product development programs and regulatory matters and their management***; and
>
> - ***the quality of operational capabilities, to include systems to monitor and control the quality and safety of the Company's products and product candidates at all stages of the product life cycle***.

Additional Duties of the Science and Technology Committee Defendants

38. Under its Charter in effect since December 7, 2022, the Science and Technology Committee Defendants, defendants Afeyan, Nabel, Nader, Horning, and Langer, owed specific duties to Moderna to assist the Board in overseeing the Company's "advances in mRNA science, including those related to mRNA chemistry, sequence engineering and targeting elements." Additionally, the Science and Technology Committee identifies and discusses "significant emerging science and technology issues and trends relevant to the Company's mRNA platform."

Moderna's Code of Ethics and Business Conduct

39. Moderna's Code of Ethics and Business Conduct (the "Code of Conduct") restricts employees from buying or selling Moderna stock based on "insider information." The Code of Conduct also requires that employees "[m]aintain all books, records and accounts accurately." Specifically, the Code of Conduct states that "***[s]haring accurate scientific information*** is vital to improving health across the world. ***The integrity of our information assures regulators and patients that our products are not misrepresented***."

40. Unfortunately, the Audit Committee Charter, Product Development Committee Charter, Science and Technology Committee Charter, and Code of Conduct were violated. In particular, the Individual Defendants disseminated materially false and misleading statements concerning mRNA-1345's vaccine efficacy rate which artificially inflated Moderna's stock price. While the Company's stock price was artificially inflated, the Director Defendants repurchased Moderna's stock, and the Insider Selling Defendants dumped their Moderna stock.

CONSPIRACY, AIDING AND ABETTING, AND CONCERTED ACTION

41. In committing the wrongful acts alleged herein, the Individual Defendants have pursued, or joined in the pursuit of, a common course of conduct, and have acted in concert with

and conspired with one another in furtherance of their common plan or design. In addition to the wrongful conduct herein alleged as giving rise to primary liability, the Individual Defendants further aided and abetted or assisted each other in breaching their respective duties.

42. During all times relevant hereto, the Individual Defendants, collectively and individually, initiated a course of conduct that was designed to and did: (i) deceive the investing public, including stockholders of Moderna, regarding the Individual Defendants' management of the Company's operations and mRNA-1345's true efficacy rate; (ii) artificially inflate Moderna's stock price while the Insider Selling Defendants made illegal lucrative sales of Company stock based on material, nonpublic information; (iii) repurchase Moderna stock while it was artificially inflated causing an overpayment of $218.6 million; and (iv) enhance the Individual Defendants' executive and directorial positions at Moderna and the profits, power, and prestige that the Individual Defendants enjoyed as a result of holding these positions. In furtherance of this plan, conspiracy, and course of conduct, the Individual Defendants, collectively and individually, took the actions set forth herein.

43. The purpose and effect of the Individual Defendants' conspiracy, common enterprise, and common course of conduct was, among other things, to disguise the Individual Defendants' violations of law, breaches of fiduciary duty, waste of corporate assets, and unjust enrichment.

44. The Individual Defendants accomplished their conspiracy, common enterprise, and common course of conduct by causing the Company to violate internal policies purposefully or recklessly for their own personal financial benefit. Because the actions described herein occurred under the authority of the Board, each of the Individual Defendants was a direct, necessary, and

substantial participant in the conspiracy, common enterprise, and common course of conduct complained of herein.

45. Each of the Individual Defendants aided and abetted and rendered substantial assistance in the wrongs complained of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each Individual Defendant acted with knowledge of the primary wrongdoing, substantially assisted in the accomplishment of that wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

MODERNA DEVELOPS MRNA VACCINES

46. Moderna is a biotechnology company that discovers, develops, and commercializes mRNA therapeutics and vaccines for the treatment of infectious diseases, immuno-oncology, rare diseases, autoimmune diseases, and cardiovascular diseases in the United States., Europe, and internationally. The Company's products include mRESVIA (mRNA-1345), an mRNA RSV vaccine, to protect adults aged sixty years and older from lower respiratory tract disease caused by RSV infection.

47. Vaccines are regulated by the FDA. When vaccines are developed, the FDA does a review of laboratory and clinical data to ensure the safety, efficacy, purity, and potency of these products.

48. Vaccine effectiveness is a measure of how well vaccination protects people against health outcomes such as infection, symptomatic illness, hospitalization, and death. Vaccine effectiveness is generally measured by comparing the frequency of health outcomes in vaccinated and unvaccinated people. Vaccine efficacy is a clinically measurable result acquired in ideal or controlled conditions, such as in a clinical trial. Some of those controlled conditions may include, for example, that the trial participants are carefully chosen or given specific instructions to reduce

their risk of infection. In a randomized clinical trial, where volunteers are randomly given a vaccine or a placebo, 80% efficacy means people who got the vaccine were at 80% lower risk of contracting the disease in question than those in the placebo group (who did not receive the vaccine). Efficacy is a crucial concept in vaccine trials and is a measurement of how much a vaccine lowers the risk of an outcome. Additionally, pharmaceutical companies and the FDA measure vaccine efficacy over time. Accordingly, a vaccine's efficacy rate is very important to investors because it can affect approval by the FDA and commercial success against rival companies.

IMPROPER STATEMENTS

49. Beginning January 17, 2023, the Individual Defendants disseminated materially false and misleading statements concerning the vaccine efficacy of mRNA-1345. Specifically, the Individual Defendants failed to disclose that: (i) mRNA-1345 was less effective than the Individual Defendants had led investors to believe; and (ii) accordingly, mRNA-1345's clinical and commercial prospects were overstated.

50. On January 17, 2023, Moderna issued a press release during after-market hours titled "Moderna Announces mRNA-1345, an Investigational Respiratory Syncytial Virus (RSV) Vaccine, Has Met Primary Efficacy Endpoints in Phase 3 Trial in Older Adults." The press release stated that the vaccine's efficacy was 83.7%. In particular, the press release stated:

> Moderna ... today announced positive topline data from its ConquerRSV Phase 3 pivotal efficacy trial of mRNA-1345, an investigational mRNA vaccine targeting respiratory syncytial virus (RSV) in older adults. ***Following review by an independent Data and Safety Monitoring Board (DSMB), the primary efficacy endpoints have been met, including vaccine efficacy (VE) of 83.7% (95.88% CI: 66.1%, 92.2%; p<0.001) against RSV-associated lower respiratory tract disease (RSV-LRTD) as defined by two or more symptoms***. Based on these results, Modern intends to submit for regulatory approval in the first half of 2023.

> "Today's results represent an important step forward in preventing lower respiratory disease due to RSV in adults 60 years of age and older. These data are encouraging, and represent the second demonstration of positive phase 3 trial results from our mRNA infectious disease vaccine platform after, Spikevax, our COVID-19 vaccine. We look forward to publishing the full data set and sharing the results at an upcoming infectious disease medical conference," said [Defendant] Bancel[.] "Respiratory diseases are a major public health priority given they have a significant health impact and are a leading cause of hospitalization. For these reasons, in addition to our mRNA-1345 RSV vaccine candidate, we are committed to developing a portfolio of respiratory mRNA vaccines to target the most significant viruses causing respiratory disease, including COVID-19, influenza, and human metapneumovirus."

51. On January 30, 2023, the Company issued a press release titled "Moderna Granted FDA Breakthrough Therapy Designation for mRNA-1345, an Investigational Respiratory Syncytial Virus (RSV) Vaccine Candidate." The press release touted the FDA's breakthrough designation for mRNA-1345. In particular, the press release stated:

> ***Moderna ... today announced mRNA-1345, an investigational mRNA vaccine candidate for respiratory syncytial virus (RSV), has been granted Breakthrough Therapy Designation by the U.S. Food and Drug Administration (FDA) for the prevention of RSV-associated lower respiratory tract disease (RSV-LRTD) in adults aged 60 years or older. The designation was based on positive topline data from the ConquerRSV Phase 3 pivotal efficacy trial.***
>
> "The FDA's Breakthrough Designation for mRNA-1345 further emphasizes the significant health impact of RSV in older adults and the high unmet need," said [Defendant] Bancel[.] "With this designation, we look forward to productive conversations with the FDA in the hopes of bringing our RSV vaccine candidate for older adults to the market safely and quickly. Moderna's mRNA platform has now demonstrated two positive Phase 3 infectious disease trial results and we continue to advance a portfolio of respiratory mRNA vaccines targeting the most serious diseases. We are grateful to the FDA for this designation."
>
> The FDA's Breakthrough Therapy Designation is granted to expedite the development and review of drugs that are intended to treat a serious condition, and when preliminary clinical evidence indicates the drug or vaccine may demonstrate substantial improvement over available therapy on a clinically significant endpoint(s).

52. On February 23, Moderna issued a press release announcing the Company's fourth quarter and full year 2022 financial results. The press release continued to tout the 83.7% vaccine efficacy of mRNA-1345, stating:

> "2022 was another impressive year for Moderna, with over $19 billion in revenue and significant clinical breakthroughs across our portfolio. We continue to provide our Omicron-targeting bivalent vaccines worldwide, with the latest real-world evidence highlighting the continued protection of our vaccines against hospitalization and death," said [defendant] Bancel[.] "Our infectious disease platform continues to progress with positive Phase 3 data in RSV for older adults. We are investing to scale Phase 3 manufacturing for personalized cancer vaccines so that we can run several Phase 3 studies simultaneously. With planned R&D investments of $4.5 billion for the year, I am excited about the new medicines we believe we will bring to patients in the coming few years."
>
> * * *
>
> ***RSV vaccine in older adults (mRNA-1345) met its primary efficacy endpoint and received Breakthrough Therapy Designation from FDA. mRNA-1345 demonstrated vaccine efficacy of 83.7% against RSV lower respiratory tract disease, defined by 2 or more symptoms, and 82.4% with 3 or more symptoms in older adults***. mRNA-1345 was generally well tolerated, with no safety concerns identified by the Data Safety Monitoring Board (DSMB). Based on these results, Moderna expects to submit a Biologics License Application (BLA) for mRNA-1345 to the FDA in the first half of 2023. The pediatric Phase 1 trial of mRNA-1345 is fully enrolled.

53. That same day, defendant Hoge participated in Moderna's earnings call with analysts and investors to discuss the Company's fourth quarter 2022 financial results. During the call, defendant Hoge touted m-RNA-1345's efficacy rate:

> Now, moving to RSV. As you know, we shared the top line results from our Phase III RSV study in older adults earlier this year. And today, we shared additional data that was presented this morning at RSVVW. ***The top line results we have seen are incredibly encouraging and we are grateful to the FDA for breakthrough therapy designation for mRNA-1345, which further emphasizes the significant health impact of RSV in older adults and the high unmet need.***
>
> ***In the top line data presented in January, the mRNA-1345 demonstrated 83.7% vaccine efficacy and the primary endpoint of lower respiratory tract disease with two or more symptoms***. 1345 was found to be generally well tolerated and there were no safety concerns identified by the Data and Safety Monitoring Board.

54. On February 24, 2023, Moderna filed its Annual Report on Form 10-K for the year ended December 31, 2022 (the "2022 Form 10-K") with the SEC. The 2022 Form 10-K included an overview of the Company's strategy, including executing commercialization plans for COVID-19 vaccines. In particular, the 2022 Form 10-K stated:

> We believe that the development of mRNA medicines represents a significant breakthrough for patients, our industry and human health globally. Our success in developing a highly effective vaccine against COVID-19, going from sequence selection, conducting clinical trials and to receipt of regulatory authorization for emergency use, all in less than a year, and subsequently receiving BLA approval from the FDA, provides a visible example of the promise of mRNA medicine. The Moderna COVID-19 Vaccine/Spikevax has been authorized for use or approved in over 70 countries. As our first approved product, Spikevax has helped hundreds of millions of people worldwide combat the COVID-19 pandemic. We believe our success in developing our COVID-19 vaccines has positive implications beyond infectious disease vaccines and across our entire pipeline. We currently have 48 programs in development, and our pipeline spans infectious diseases, including vaccines against respiratory diseases, latent diseases and public health pathogens, as well as four therapeutic areas: immuno-oncology, rare diseases, cardiovascular diseases and autoimmune diseases.
>
> In order to deliver on the full scope of the mRNA opportunity and maximize long-term value for patients and investors, we have formulated strategic priorities that guide our near-term and long-term goals:
>
> **Execute our commercialization plans for our COVID-19 vaccines**. Our COVID-19 vaccines have been approved in more than 70 countries. We are transitioning to prepare for an endemic, commercial market for COVID-19 vaccines in the United States and other countries. We are working to build a differentiated commercial model, with active commercial subsidiaries across North America, Europe and the Asia-Pacific region, providing us with local commercial teams in key markets around the world.
>
> **Build an unrivaled seasonal respiratory vaccine franchise**. As we build our respiratory franchise, we are applying our experience and using our mRNA platform to develop medicines that can help prevent hospitalizations and deaths from the most prevalent respiratory viruses. We are currently developing vaccines against COVID-19, seasonal flu and RSV individually, while pursuing parallel development of combination vaccines. In January 2023, we announced that our older adult RSV vaccine candidate had met its primary efficacy endpoints in a Phase 3 trial. Our long-term vision is to develop, and seek regulatory approval for, a convenient, annual, single-dose booster against as many respiratory viruses as

possible. mRNA vaccines have the ability to combine multiple different antigens into one vaccine. We believe that combination vaccines have the potential to improve health outcomes at lower costs due to higher compliance, better uptake, a larger benefit to the healthcare system (including through reduced vaccine administration costs) and increased consumer convenience. We have preparations underway for multiple potential vaccine launches globally over the next several years.

55. In providing an overview of mRNA-1345, the 2022 Form 10-K stated that the topline results were positive and touted the drug's 83.7% efficacy rate. In particular, the 2022 Form 10-K stated:

We are developing an RSV vaccine for children and adults. In older adults, mRNA1345 reported positive topline Phase 3 efficacy results in January 2023; in pediatrics, mRNA-1345 is ongoing in a Phase 1 study.

* * *

mRNA-1345 encodes an engineered form of the RSV F protein stabilized in the prefusion conformation and is formulated in our proprietary LNP. We believe that neutralizing antibodies elicited by mRNA-1345 may lead to an efficacious RSV vaccine.

Latest data and next steps

In January 2023, we announced that mRNA-1345 had met primary efficacy endpoints in the pivotal Phase 3 trial in older adults, ages 60 and older. ***mRNA1345 demonstrated vaccine efficacy (VE) of 83.7%*** (95.88% CI: 66.1%, 92.2%; p<0.0001) against RSV-associated lower respiratory tract disease (RSV-LRTD) as defined by two or more symptoms. The other primary efficacy endpoint against RSV-LRTD defined by three or more symptoms was also met, with a VE of 82.4% (96.36% CI: 34.8%, 95.3%; p=0.0078). mRNA-1345 was generally well-tolerated with no safety concerns identified by the DSMB. The overall rate of severe (Grade 3 or greater) solicited systemic adverse reactions was 4.0% for mRNA-1345 and 2.8% for placebo. The overall rate of Grade 3 or greater solicited local adverse reactions was 3.2% for mRNA-1345 and 1.7% for placebo. The study is ongoing, and an updated analysis of safety and tolerability will be provided at the time of regulatory submission.

Based on the positive topline data from the pivotal Phase 3 efficacy trial, the FDA granted mRNA-1345 Breakthrough Therapy Designation for the prevention of RSV-LRTD in adults 60 years or older. We intend to submit mRNA-1345 to the FDA for regulatory approval for older adults in the first half of 2023.

56. On March 15, 2023, Moderna filed its Definitive Proxy Statement on Form DEF 14A (the "2023 Proxy") with the SEC. Defendants Bancel, Afeyan, Berenson, Horning, Langer, Nabel, Nader, Sagan, and Tallett solicited the 2023 Proxy. In a section titled "Board's Role in Risk Oversight," the 2023 Proxy assured the public that the Board and the Audit Committee were overseeing the Company's disclosures, stating:

> ***Our Board is responsible for overseeing risk management. It exercises its oversight primarily through its committees***. The full Board (or the appropriate committee for risks that are under the purview of a particular committee) discusses with management our major risk exposures, their potential impact, and the steps we take to manage them. ***The Board must satisfy itself that the risk management processes designed and implemented by management are adequate and functioning as intended.*** When a Board committee is responsible for evaluating and overseeing the management of a particular risk, the Chair of that committee reports on it to the full Board at regular meetings so the Board can coordinate the risk oversight role among the relevant parties.
>
> * * *
>
> **Audit Committee**
> **Primary Risk Oversight**
>
> - ***The integrity of Moderna's financial statements and related disclosures***.
> - Moderna's internal control over financial reporting and policies relating to risk assessment and management.
> - ***Moderna's major financial risk exposures and steps taken to monitor and control such exposures***, including overseeing treasury and tax operations.
> - Policies and procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, and whistleblower complaints.
> - Internal audit and compliance functions.
> - Information security and technology risks, including cybersecurity and related risk management programs.

57. On April 11, 2023, the Company issued a press release titled "Moderna Announces Clinical and Program Updates at 4th Vaccines Day." The press release again touted mRNA-1345's efficacy rate, stating:

mRNA-1345

> mRNA-1345, Moderna's RSV vaccine candidate, is in an ongoing Phase 2/3, randomized, observer-blind, placebo-controlled case-driven trial (ConquerRSV) in adults aged 60 years and older. In this study, 35,541 participants from 22 countries were randomized 1:1 to receive one dose of mRNA-1345 or placebo.
>
> ***Following review by an independent Data and Safety Monitoring Board (DSMB), the primary efficacy endpoints have been met, including vaccine efficacy (VE) of 83.7% (95.88% CI: 66.1%, 92.2%; p<0.0001) against RSV-associated lower respiratory tract disease (RSV-LRTD) as defined by two or more symptoms***. Vaccine efficacy was maintained in participants over 70 years of age and participants with comorbidities. mRNA-1345 was well tolerated; solicited adverse reactions were mostly grade 1 or grade 2 in severity. No cases of Guillain-Barre Syndrome (GBS) have been reported.
>
> mRNA-1345 has been granted Breakthrough Therapy Designation (BTD) by the FDA for the prevention of RSV-LRTD in adults aged 60 years or older.

58. On May 4, 2023, defendant Hoge participated in Moderna's earnings call with analysts and investors to discuss the Company's first quarter 2023 financial results. During the call, defendant Hoge claimed that the vaccine's efficacy was "consistently high across all age groups." In particular, defendant Hoge stated:

> Moving to RSV. We're pleased by the profile of our vaccine in older adults with high and consistent efficacy against RSV lower respiratory tract disease across populations in our large Phase III study. ***At 2 recent medical meetings, we've shared data showing our vaccine's efficacy was consistently high across all age groups, including in the oldest adult and in participants with preexisting comorbidities that put them at higher risk***.
>
> mRNA1345 has also shown a favorable tolerability profile with AEs mostly grade 1 or grade 2, mild to moderate. As we shared during Vaccines Day, today, we have not seen any cases of Guillain-Barré syndrome or other severe demyelinating events in the trial.

59. On July 5, 2023, Moderna issued a press release titled "Moderna Announces Global Regulatory Submissions for Its Respiratory Syncytial Virus (RSV) Vaccine, mRNA-1345." The press release reiterated that "mRNA-1345 met primary efficacy endpoints, demonstrating vaccine efficacy of 83.7% against RSV lower respiratory tract disease in older adults in the Phase 3 pivotal

efficacy trial[.]" The press release also quoted defendant Bancel touting the positive impact that mRNA-1345 has had globally. In particular, the press release stated:

> "We are proud to announce these filings for the use of our RSV vaccine candidate, mRNA-1345, in the European Union, Switzerland, Australia, and the U.S. RSV is a major cause of lower respiratory tract infections in older adults and can cause a significant burden to health systems through hospitalizations and emergency care admissions," said [defendant] Bancel[.] "Our mRNA platform has allowed us to move from initial clinical testing to our first international Phase 3 trial to initiation of regulatory submissions for mRNA-1345 in just two years, enabling us to tackle this pervasive public health burden with speed and clinical rigor. mRNA-1345 represents the second product coming from our mRNA platform to seek global approval, and with recent positive data in rare disease and cancer, we expect more in the future - further demonstrating the tremendous potential of mRNA to combat disease."

60. On August 3, 2023, the Company issued a press release announcing Moderna's second quarter 2023 financial results. The press release quoted defendant Bancel touting the RSV vaccine, stating:

> "Second quarter sales were on target, given the seasonal nature of Covid. I am pleased with the progress our U.S. commercial team has made to get new contracts in place for fall 2023. We are on track to deliver 2023 sales between $6 billion to $8 billion, depending on Covid vaccination rates in the U.S.," said [defendant] Bancel[.] "Our late-stage clinical pipeline is firing on all cylinders with four infectious disease vaccines in Phase 3, including RSV which was recently submitted to regulators for approval. Our individualized neoantigen therapy is now in Phase 3 for melanoma and our lead rare disease program for PA is in dose confirmation. We believe that all these products should launch in 2024, 2025 or 2026, and we are continuing to invest in scaling Moderna to bring forward an unprecedented number of innovative mRNA medicines for patients."

61. That same day, defendants Bancel and Hoge participated in Moderna's earnings call with analysts and investors to discuss the Company's second quarter 2023 financial results. During the call, defendant Bancel stated, "We've also started to manufacture mRNA-1345 in preparation for the launch. As a reminder, at launch, these products will be in a prefilled syringe presentation, ***which combined with the strong efficacy profile will position very well our product to healthcare***

professionals." Defendant Hoge stated that mRNA-1345 was expected to be launched commercially the following year:

> Moving to RSV. As [defendant Bancel] mentioned earlier, we are pleased to be on track for regulatory approvals in 2024. Earlier this month, we announced a rolling submission to the FDA, and we plan to use a priority voucher to accelerate that review. We also filed additional regulatory applications in Europe, Switzerland, Australia, and the UK. ***We're incredibly encouraged by the profile of mRNA-1345 and look forward to the expected commercial launch next year***.

62. On September 13, 2023, Moderna issued a press release titled "Moderna Expands the Field of mRNA Medicine with Positive Clinical Results Across Cancer, Rare Disease, and Infectious Disease." The press release reiterated that mRNA-1345 "***met both its primary efficacy endpoints, with a vaccine efficacy (VE) of 83.7%***[.]" The press release also touted the Company's pipeline, including mRNA-1345, stating:

> **Expanding the Field of mRNA Medicine**
>
> Moderna was founded and built to use nature's information molecule, mRNA, to treat and prevent disease. The premise has always been that an mRNA-based approach to making medicine could advance at the pace of information, leveraging common science, technology, and infrastructure to create medicines addressing high unmet needs at unprecedented speed and efficiency.
>
> Through more than a decade of investment in science, the Company has created the field of mRNA medicine. The Company has advanced a diverse pipeline and demonstrated the potential for clinical benefit in cancer (mRNA-4157), in three different rare diseases (mRNA-3705, mRNA-3927, mRNA-3745), and multiple infectious disease vaccines (mRNA-1273, ***mRNA-1345***, mRNA-1010). The Company has advanced six programs into late-stage development, including two approved or filed for approval, and three more that have completed Phase 3 enrollment. The Company expects to double the number of programs in Phase 3 by 2025 and launch up to 15 products in five years across cancer, rare disease, and infectious disease. Up to four of those launches could come by 2025.

63. On November 2, 2023, Moderna issued a press release announcing the Company's financial results for the third quarter of 2023. The press release stated that mRNA-1345 "met both

its primary efficacy endpoints, with a vaccine efficacy (VE) of 83.7%." The press release further touted the upcoming marketing launch for mRNA-1345, stating:

> ***Moderna is preparing for the marketing launch of mRNA-1345 and believes its U.S. COVID-19 market share to date demonstrates the Company's ability to compete in the commercial market***. The Company is encouraged by early indications of strong consumer awareness and demand in the RSV market. Moderna believes that clinical data for its RSV vaccine supports a best-in-class profile and that its ready-to-use pre-filled syringes (PFS) offer another competitive differentiator over currently licensed products, which require multiple preparatory steps by pharmacists and clinicians. Feedback from clinicians and customers in the COVID-19 market, where Moderna has a similar presentation, validates the benefits of PFS administration. The Company's pre-launch activities at this time are largely focused on scientific exchanges and public health engagements.

64. On December 14, 2023, Moderna issued a press release titled "Moderna Announces New England Journal of Medicine Publication of Pivotal Phase 3 Clinical Safety and Efficacy Data for MRNA-1345, the Company's Investigational Respiratory Syncytial Virus (RSV) Vaccine." The press release claimed that the Company expects a marketing launch in 2024 for the vaccine, stating:

> RSV is a highly contagious virus that causes severe disease across the age spectrum, including older adults. Each year in the U.S., RSV leads to approximately 60,000-160,000 hospitalizations and 6,000-10,000 deaths among older adults. Applications for mRNA-1345 have been submitted to regulators around the world. ***Moderna is actively preparing for an expected 2024 marketing launch of mRNA-1345 and believes its U.S. COVID-19 market share to date demonstrates the Company's ability to compete in the commercial market***. If approved, mRNA-1345 would have a potential best-in-class profile and be the only ready-to-use RSV vaccine available in single-dose prefilled syringes.

65. On February 22, 2024, Moderna issued a press release announcing the Company's fourth quarter full year 2023 financial results. The press release reiterated that mRNA-1345 "met both its primary efficacy endpoints, with a vaccine efficacy (VE) of 83.7%[.]"

66. That same day, defendant Bancel participated in Moderna's earnings call with analysts and investors to discuss the Company's fourth quarter 2023 financial results. During the

call, defendant Bancel claimed that the clinical data for mRNA-1345 showed "strong vaccine efficacy," stating:

> Moving to our RSV vaccine candidates. We are very excited about launching the RSV vaccine this year. That will be the launch of our second product our mRNA platform is delivering. The FDA PDUFA date is May 12. If the outcome is positive, we anticipate that ACIP will include mRNA-1345 on the agenda in late June.
>
> * * *
>
> Let me now turn to our RSV vaccine profile. ***We believe we have the best profile to serve patients and completing the RSV market, efficacy, safety, and ease of use. Our clinical data shows strong vaccine efficacy***. We have a well-established safety and tolerability profile that leverages the same mRNA technology that has been delivered in over 1 billion COVID vaccines. Additionally, we have not seen any case of Guillain-Barre Syndrome or GBS in our Phase III trial.

67. On February 23, 2024, the Company filed its Annual Report on Form 10-K for the year ended December 31, 2023 (the "2023 Form 10-K") with the SEC. The 2023 Form 10-K contained substantively similar descriptions of the Company's strategy and overview of mRNA-1345 as discussed in the 2022 Form 10-K.

68. On March 21, 2024, Moderna filed its Definitive Proxy Statement on Form DEF 14A (the "2024 Proxy") with the SEC. Defendants Bancel, Afeyan, Berenson, Horning, Langer, Nabel, Nader, Sagan, and Tallett, solicited the 2024 Proxy. In a section titled "Board's Role in Risk Oversight," the 2024 Proxy falsely assured the public that Board was overseeing the Company's disclosures and risks posed to the Company, stating:

> ***Our Board is responsible for overseeing risk management.*** It exercises its oversight primarily through its committees. The full Board or applicable committee discusses with management our major risk exposures, their potential impact, and the steps we take to manage them. The Board must satisfy itself that the risk management processes designed and implemented by management are adequate and functioning as intended. When a Board committee is responsible for evaluating and overseeing the management of a particular risk, the Chair of that committee reports on it to the full Board at regular meetings so the Board can coordinate the risk oversight role among the relevant parties. The Board's standing committees each having primary oversight for risks related to the areas set forth below.

* * *

Audit Committee

- ***Ensuring the integrity of Moderna's financial statements and related disclosures***.
- ***Maintaining effective internal control over financial reporting and policies relating to risk assessment and management***.
- ***Mitigating exposure to major financial risks and taking steps to monitor and control such exposures***, including overseeing treasury and tax operations.
- Strengthening our cybersecurity program and protection against other technology-related risks.
- Implementation of policies and procedures related to the receipt, retention and treatment of complaints regarding accounting, internal controls or auditing matters, and handling of whistleblower complaints.
- Ensuring that internal audit and compliance plans are aimed at identifying and mitigating key risks.

69. The false and misleading 2024 Proxy also solicited a stockholder vote to amend the Company's Certificate of Incorporation to limit the liability of Moderna's officers. In particular, the 2024 Proxy stated:

> In August 2022, the State of Delaware, which is the Company's state of incorporation, enacted legislation that enables Delaware companies to limit the liability of certain officers in limited circumstances. The amended Delaware law permits exculpation for direct claims brought by shareholders for breach of an officer's fiduciary duty of care, but would not permit companies to eliminate officers' monetary liability for breach of fiduciary duty claims brought by the company itself or for derivative claims brought by shareholders on behalf of the company. The new law also does not allow officers to be exculpated for breaches of the duty of loyalty, acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, or any transaction in which an officer derived an improper personal benefit.

70. The 2024 Proxy explained that the proposal would "limit the liability of certain officers of the Company in limited circumstances" because "it is important to provide protection from certain liabilities and expenses that may discourage prospective or current officers from serving the Company." According to Moderna's Current Report on Form 8-K filed with the SEC on May 9, 2024, stockholders approved the proposal. Unfortunately, while stockholders were

limiting Moderna's officers' liability, those same officers were making materially false and misleading statements while dumping Moderna stock—a fact unknown to stockholders when they voted on the proposal. Notably, the Audit Committee Report, located in the 2024 Proxy, which assured stockholders that the Audit Committee oversaw the Company's risks and disclosures—including the 2023 Form 10-K—was only two pages before the proposal to limit Moderna officers' liability.

71. On March 27, 2024, the Company issued a press release titled "Moderna Advances Multiple Vaccine Programs to Late-Stage Clinical Trials." The press release reiterated that mRNA-1345 "met both its primary efficacy endpoints, with a vaccine efficacy (VE) of 83.7%[.]"

THE TRUTH EMERGES

72. The truth behind the Company's business prospects and Individual Defendants' wrongdoing began to emerge when the Moderna revealed the true efficacy of mRNA-1345. On May 31, 2024, the Company issued a press release "announc[ing] that the [FDA] has approved mRESVIA (mRNA-1345) ... to protect adults aged 60 years and older from lower respiratory tract disease caused by RSV infection." However, the Company's press release indicated a vaccine efficacy of only 78.7%, significantly lower than the 83.7% vaccine efficacy rate that Moderna had previously identified in its July 2023 BLA rolling submission to the FDA.

73. Following this announcement, market analysts took notice of mRNA-1345's lower-than-expected vaccine efficacy rate. For example, *Reuters* published an article that same day titled "US FDA Approves Moderna's RSV Vaccine with Lower-than-Expected Efficacy in Its Label." The FDA required a label stating that the vaccine was only 79% effective at preventing two symptoms of RSV. In particular, the article stated:

> The U.S. Food and Drug Administration approved Moderna's (MRNA.O), respiratory syncytial virus (RSV) vaccine, the company announced on Friday, giving it a shot at much-needed new revenue from a second product.
>
> Moderna's vaccine was approved for the prevention of RSV-associated lower respiratory tract disease in adults aged 60 or older, ***but with a label indicating the shot was 79% effective at preventing at least two symptoms of RSV, such as cough and fever.***
>
> Moderna had filed for FDA approval in July on data from a late-stage trial that showed its vaccine was 84% effective at preventing those symptoms, and its shares were down more than 6% in afternoon trading.

74. On this news, Moderna's market capitalization plunged more than 5.9%, or $8.94 per share, on May 31, 2024, to close at $142.55 per share compared to the previous trading day's closing of $151.49 per share, erasing almost $3.4 billion in market capitalization in a single day.

75. On June 26, 2024, in a presentation before the CDC's ACIP, Moderna disclosed that after eighteen months, mRNA-1345 proved only 49.9% to 50.3% effective against multiple symptoms of lower respiratory tract disease—a significantly lower efficacy rate than vaccines produced by Moderna's competitors. Following this presentation, the market once again took notice of mRNA-1345's reduced efficacy rate. For instance, *Reuters* published an article titled "Moderna Says Its RSV Shot Is 50% Effective Across a Second Season." In particular, *Reuters* stated:

> ***Moderna ... respiratory syncytial virus (RSV) shot mRESVIA showed 50% efficacy in preventing RSV after 18 months, the drugmaker said on Wednesday***.
>
> In their clinical trials, GSK's RSV vaccine Arexvy was 78% effective in preventing severe RSV over a second year and Pfizer's was 78% effective through a second RSV season.
>
> Moderna presented the data at a meeting of the U.S. Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices. The drugmaker has previously cautioned against comparing its vaccine to rivals, noting that the trials were not head-to-head and used different case definitions for RSV disease.

76. *Bloomberg* also reported on the news and published an article titled "Moderna RSV Vaccine Efficacy Sinks over Time, CDC Documents Show." In particular, *Bloomberg* stated:

> Moderna ... shares sank after new data showed the efficacy of its RSV shot fell sharply in the second year and was lower than that of rival vaccines.
>
> The results could further raise doubts over the prospects for its shot, which is already third to the market. Moderna shares fell as much as 11%, their biggest intraday decline since November.
>
> ***Moderna's shot dropped from 55% efficacy over the first 12 months to 36% in the second year in patients with at least three "lower respiratory" symptoms of RSV, according to documents posted Wednesday on the Centers for Disease Control and Prevention website***.
>
> * * *
>
> Jefferies analyst Michael Yee said in a research note that Moderna's new figures were "on the lower end of expectations," while pointing out that comparisons were difficult because the companies studied their vaccines during different seasons.

77. In the wake of the June 26, 2024 presentation, Moderna's stock plunged by more than 15.7%, or $21.65 per share, for four days until July 1, 2024, to close at $115.95 per share compared to June 25, 2024's closing of $137.60 per share, erasing over $8.3 billion in market capitalization.

INSIDER SALES BY THE INSIDER SELLING DEFENDANTS

78. Rather than providing the market with correct information, the Insider Selling Defendants, defendants Bancel, Afeyan, and Hoge, used their knowledge of Moderna's material, nonpublic information to sell their personal holdings while the Company's stock was artificially inflated. As officers and directors of Moderna, the Insider Selling Defendants were privy to material, nonpublic information about the Company's true business health and mRNA-1345's actual efficacy rate.

79. While in possession of this knowledge, defendant Bancel sold 1,867,155 shares of his personally held Company stock for proceeds of $273.8 million. Defendant Bancel's sales were timed to maximize profit from Moderna's then artificially inflated stock price.

80. While in possession of adverse material nonpublic information, defendant Afeyan sold 797,832 shares of his personally held Company stock for proceeds of $103.7 million. Defendant Afeyan's sales were time to maximize profit from Moderna's then artificially inflated stock price. Notably, a significant portion of defendant Afeyan's sales (shown in more detail below) were made pursuant to a 10b5-1 trading plan adopted on or after February 27, 2023, after the materially misleading statements began.

81. While in possession of adverse material nonpublic information, defendant Hoge sold 195,000 shares of his personally held Company stock for proceeds of $21.5 million. Defendant Hoge's sales were timed to maximize profit from Moderna's then artificially inflated stock price. Notably, all of defendant Hoge's sales (shown in more detail below) were made pursuant to a 10b5-1 trading plan adopted on March 15, 2023, after the materially misleading statements began.

82. The Insider Selling Defendants' sales were timed to maximize profit from the Individual Defendants' overall scheme to artificially inflate Moderna's stock price. In sum, the Insider Selling Defendants sold over $399 million worth of stock at artificially inflated prices as detailed by the table below:

Insider Last Name	Transaction Date	Shares	Price	Proceeds
BANCEL Current CEO and a Director	1/18/2023	9,821	$195.31	$1,918,139.51
	1/18/2023	5,948	$196.84	$1,170,804.32
	1/18/2023	15,554	$197.58	$3,073,159.32
	1/18/2023	851	$198.46	$168,889.46
	1/18/2023	1,475	$199.94	$294,911.50
	1/18/2023	1,501	$200.82	$301,430.82
	1/18/2023	900	$202.20	$181,980.00

1/18/2023	1,020	$203.06	$207,121.20
1/18/2023	300	$204.13	$61,239.00
1/18/2023	1,758	$205.20	$360,741.60
1/18/2023	872	$206.50	$180,068.00
1/19/2023	9,341	$191.16	$1,785,625.56
1/19/2023	18,438	$191.88	$3,537,883.44
1/19/2023	9,517	$192.84	$1,835,258.28
1/19/2023	2,704	$193.61	$523,521.44
1/25/2023	6,790	$190.65	$1,294,513.50
1/25/2023	6,260	$191.51	$1,198,852.60
1/25/2023	19,850	$192.32	$3,817,552.00
1/25/2023	7,100	$193.39	$1,373,069.00
1/26/2023	4,295	$188.09	$807,846.55
1/26/2023	3,835	$189.21	$725,620.35
1/26/2023	8,823	$190.27	$1,678,752.21
1/26/2023	15,847	$191.08	$3,028,044.76
1/26/2023	3,289	$192.16	$632,014.24
1/26/2023	3,911	$192.92	$754,510.12
2/1/2023	5,848	$167.97	$982,288.56
2/1/2023	16,742	$168.75	$2,825,212.50
2/1/2023	6,024	$169.85	$1,023,176.40
2/1/2023	1,629	$170.67	$278,021.43
2/1/2023	600	$171.89	$103,134.00
2/1/2023	1,957	$173.03	$338,619.71
2/1/2023	2,503	$174.21	$436,047.63
2/1/2023	4,697	$174.82	$821,129.54
2/2/2023	2,001	$171.11	$342,391.11
2/2/2023	1,589	$172.04	$273,371.56
2/2/2023	8,908	$173.19	$1,542,776.52
2/2/2023	10,263	$174.25	$1,788,327.75
2/2/2023	15,790	$175.03	$2,763,723.70
2/2/2023	1,449	$175.79	$254,719.71
2/8/2023	9,589	$164.65	$1,578,828.85
2/8/2023	19,648	$165.77	$3,257,048.96
2/8/2023	4,543	$166.51	$756,454.93
2/8/2023	2,772	$168.01	$465,723.72
2/8/2023	2,848	$168.64	$480,286.72
2/8/2023	600	$169.40	$101,640.00
2/9/2023	24,628	$165.04	$4,064,605.12
2/9/2023	11,272	$165.93	$1,870,362.96
2/9/2023	1,600	$166.86	$266,976.00
2/9/2023	2,100	$168.26	$353,346.00
2/9/2023	400	$169.01	$67,604.00
2/15/2023	10,327	$173.68	$1,793,593.36
2/15/2023	13,375	$174.77	$2,337,548.75
2/15/2023	14,812	$175.85	$2,604,690.20
2/15/2023	1,486	$176.73	$262,620.78
2/16/2023	8,952	$172.14	$1,540,997.28

2/16/2023	28,331	$173.30	$4,909,762.30
2/16/2023	2,717	$173.79	$472,187.43
2/22/2023	10,472	$157.87	$1,653,214.64
2/22/2023	20,303	$158.53	$3,218,634.59
2/22/2023	8,725	$159.59	$1,392,422.75
2/22/2023	500	$160.28	$80,140.00
2/23/2023	7,314	$144.45	$1,056,507.30
2/23/2023	7,486	$145.25	$1,087,341.50
2/23/2023	12,890	$146.75	$1,891,607.50
2/23/2023	8,256	$147.43	$1,217,182.08
2/23/2023	3,754	$148.27	$556,605.58
2/23/2023	300	$149.86	$44,958.00
3/1/2023	11,319	$134.34	$1,520,594.46
3/1/2023	21,938	$135.26	$2,967,333.88
3/1/2023	5,593	$136.17	$761,598.81
3/1/2023	1,150	$137.03	$157,584.50
3/2/2023	8,700	$136.44	$1,187,028.00
3/2/2023	17,541	$137.42	$2,410,484.22
3/2/2023	13,659	$138.27	$1,888,629.93
3/2/2023	100	$139.03	$13,903.00
3/8/2023	26,018	$141.18	$3,673,221.24
3/8/2023	13,982	$141.76	$1,982,088.32
3/9/2023	11,461	$137.25	$1,573,022.25
3/9/2023	7,739	$137.97	$1,067,749.83
3/9/2023	3,896	$139.24	$542,479.04
3/9/2023	5,563	$140.23	$780,099.49
3/9/2023	9,232	$141.30	$1,304,481.60
3/9/2023	2,109	$142.26	$300,026.34
3/15/2023	15,472	$148.33	$2,294,961.76
3/15/2023	22,481	$149.03	$3,350,343.43
3/15/2023	1,847	$150.00	$277,050.00
3/15/2023	200	$150.72	$30,144.00
3/16/2023	4,200	$148.63	$624,246.00
3/16/2023	7,500	$149.81	$1,123,575.00
3/16/2023	7,600	$150.39	$1,142,964.00
3/16/2023	17,032	$151.75	$2,584,606.00
3/16/2023	3,668	$152.49	$559,333.32
3/22/2023	3,879	$149.13	$578,475.27
3/22/2023	18,321	$149.84	$2,745,218.64
3/22/2023	14,962	$150.76	$2,255,671.12
3/22/2023	2,838	$151.67	$430,439.46
3/23/2023	6,138	$147.71	$906,643.98
3/23/2023	18,458	$148.62	$2,743,227.96
3/23/2023	5,906	$149.61	$883,596.66
3/23/2023	7,243	$150.66	$1,091,230.38
3/23/2023	996	$151.53	$150,923.88
3/23/2023	1,259	$152.55	$192,060.45
3/29/2023	31,349	$148.21	$4,646,235.29

3/29/2023	8,300	$148.83	$1,235,289.00
3/29/2023	351	$149.72	$52,551.72
3/30/2023	13,900	$147.13	$2,045,107.00
3/30/2023	2,979	$148.24	$441,606.96
3/30/2023	15,965	$149.39	$2,385,011.35
3/30/2023	7,156	$149.99	$1,073,328.44
4/5/2023	6,666	$152.74	$1,018,164.84
4/5/2023	2,934	$153.66	$450,838.44
4/5/2023	22,533	$155.01	$3,492,840.33
4/5/2023	7,754	$155.54	$1,206,057.16
4/5/2023	113	$156.50	$17,684.50
4/6/2023	2,739	$154.79	$423,969.81
4/6/2023	7,602	$155.58	$1,182,719.16
4/6/2023	1,200	$157.00	$188,400.00
4/6/2023	25,343	$158.19	$4,009,009.17
4/6/2023	3,116	$158.81	$494,851.96
4/12/2023	12,634	$155.67	$1,966,734.78
4/12/2023	16,650	$156.69	$2,608,888.50
4/12/2023	8,334	$157.67	$1,314,021.78
4/12/2023	2,382	$158.56	$377,689.92
4/13/2023	30,456	$160.63	$4,892,147.28
4/13/2023	9,444	$161.16	$1,521,995.04
4/13/2023	100	$161.98	$16,198.00
4/19/2023	11,900	$141.94	$1,689,086.00
4/19/2023	14,038	$142.95	$2,006,732.10
4/19/2023	14,062	$143.61	$2,019,443.82
4/20/2023	6,752	$141.35	$954,395.20
4/20/2023	8,780	$142.24	$1,248,867.20
4/20/2023	16,495	$143.53	$2,367,527.35
4/20/2023	7,973	$144.08	$1,148,749.84
4/26/2023	7,600	$130.27	$990,052.00
4/26/2023	16,898	$131.10	$2,215,327.80
4/26/2023	9,002	$132.55	$1,193,215.10
4/26/2023	6,500	$133.93	$870,545.00
4/27/2023	29,600	$130.41	$3,860,136.00
4/27/2023	9,900	$131.16	$1,298,484.00
4/27/2023	500	$131.90	$65,950.00
5/3/2023	13,570	$130.60	$1,772,242.00
5/3/2023	21,854	$131.54	$2,874,675.16
5/3/2023	4,576	$132.12	$604,581.12
5/4/2023	600	$132.98	$79,788.00
5/4/2023	2,846	$134.32	$382,274.72
5/4/2023	13,468	$135.06	$1,818,988.08
5/4/2023	16,552	$136.01	$2,251,237.52
5/4/2023	5,427	$136.97	$743,336.19
5/4/2023	1,107	$137.76	$152,500.32
5/10/2023	16,954	$131.08	$2,222,330.32
5/10/2023	21,247	$131.89	$2,802,266.83

	5/10/2023	1,499	$132.97	$199,322.03
	5/10/2023	300	$133.71	$40,113.00
	5/11/2023	35,330	$127.17	$4,492,916.10
	5/11/2023	4,470	$127.92	$571,802.40
	5/11/2023	200	$128.84	$25,768.00
	5/17/2023	2,333	$123.22	$287,472.26
	5/17/2023	9,350	$124.24	$1,161,644.00
	5/17/2023	11,547	$125.34	$1,447,300.98
	5/17/2023	16,248	$126.17	$2,050,010.16
	5/17/2023	522	$126.86	$66,220.92
	5/18/2023	28,476	$123.53	$3,517,640.28
	5/18/2023	10,653	$124.31	$1,324,274.43
	5/18/2023	871	$125.24	$109,084.04
	5/24/2023	28,144	$131.13	$3,690,522.72
	5/24/2023	9,820	$131.98	$1,296,043.60
	5/24/2023	2,036	$132.93	$270,645.48
	5/25/2023	10,367	$126.32	$1,309,559.44
	5/25/2023	20,641	$127.45	$2,630,695.45
	5/25/2023	8,654	$128.33	$1,110,567.82
	5/25/2023	338	$128.99	$43,598.62
	5/31/2023	9,478	$125.38	$1,188,351.64
	5/31/2023	14,636	$126.71	$1,854,527.56
	5/31/2023	11,036	$127.84	$1,410,842.24
	5/31/2023	4,850	$128.42	$622,837.00
	6/1/2023	1,410	$125.96	$177,603.60
	6/1/2023	8,611	$127.53	$1,098,160.83
	6/1/2023	29,979	$128.18	$3,842,708.22
	6/7/2023	35,872	$125.73	$4,510,186.56
	6/7/2023	4,128	$126.51	$522,233.28
	6/8/2023	22,215	$123.58	$2,745,329.70
	6/8/2023	17,396	$124.53	$2,166,323.88
	6/8/2023	389	$125.22	$48,710.58
	6/14/2023	10,642	$125.32	$1,333,655.44
	6/14/2023	20,848	$126.10	$2,628,932.80
	6/14/2023	8,510	$127.25	$1,082,897.50
	6/15/2023	4,788	$125.61	$601,420.68
	6/15/2023	5,377	$127.01	$682,932.77
	6/15/2023	8,443	$127.99	$1,080,619.57
	6/15/2023	7,115	$129.12	$918,688.80
	6/15/2023	14,277	$129.77	$1,852,726.29
	6/21/2023	20,711	$121.77	$2,521,978.47
	6/21/2023	19,289	$122.21	$2,357,308.69
	6/22/2023	24,829	$119.13	$2,957,878.77
	6/22/2023	15,171	$119.87	$1,818,547.77
	6/28/2023	2,278	$120.39	$274,248.42
	6/28/2023	11,417	$121.40	$1,386,023.80
	6/28/2023	13,094	$122.01	$1,597,598.94
	6/28/2023	366	$123.05	$45,036.30

		1,867,155		**$273,830,000.35**
AFEYAN Co-Founder; Current Chairman of the Board and a Director	1/18/2023	10,000	$200.20	$2,002,000.00
	1/25/2023	10,000	$194.33	$1,943,300.00
	2/8/2023	2,900	$164.60	$477,327.24
	2/8/2023	3,700	$165.83	$613,576.92
	2/8/2023	300	$166.59	$49,977.00
	2/8/2023	2,100	$168.27	$353,364.06
	2/8/2023	11,000	$169.32	$1,862,515.60
	2/15/2023	10,000	$173.17	$1,731,700.00
	2/22/2023	10,000	$160.35	$1,603,500.00
	3/1/2023	10,000	$139.00	$1,390,000.00
	5/31/2023	2,949	$125.69	$370,666.00
	5/31/2023	3,373	$126.72	$427,440.39
	5/31/2023	5,637	$127.84	$720,629.01
	5/31/2023	2,441	$128.55	$313,779.81
	5/31/2023	600	$129.68	$77,806.98
	6/7/2023	12,298	$125.76	$1,546,547.29
	6/7/2023	2,702	$126.59	$342,054.02
	6/14/2023	5,471	$125.43	$686,228.62
	6/14/2023	5,997	$126.17	$756,658.28
	6/14/2023	3,002	$127.19	$381,822.88
	6/14/2023	530	$128.15	$67,917.59
	6/21/2023	7,810	$121.60	$949,661.64
	6/21/2023	6,790	$122.26	$830,175.28
	6/21/2023	400	$123.48	$49,390.00
	6/28/2023	1,700	$119.84	$203,723.07
	6/28/2023	3,131	$120.77	$378,122.73
	6/28/2023	8,073	$121.87	$983,873.46
	6/28/2023	2,096	$122.83	$257,441.20
	7/5/2023	3,533	$123.46	$436,168.63
	7/5/2023	6,097	$124.17	$757,085.83
	7/5/2023	2,639	$125.15	$330,257.66
	7/5/2023	1,012	$126.54	$128,054.84
	7/5/2023	1,549	$127.55	$197,577.12
	7/5/2023	170	$128.17	$21,789.10
	7/12/2023	1,990	$124.59	$247,942.26
	7/12/2023	5,865	$125.61	$736,678.02
	7/12/2023	6,845	$126.27	$864,316.10
	7/12/2023	300	$127.15	$38,145.00
	7/19/2023	847	$124.14	$105,147.34
	7/19/2023	9,004	$125.26	$1,127,819.43
	7/19/2023	5,149	$126.08	$649,185.41
	7/26/2023	2,400	$119.61	$287,052.96
	7/26/2023	11,499	$120.50	$1,385,631.80
	7/26/2023	1,101	$121.29	$133,544.36
	8/2/2023	9,725	$110.59	$1,075,464.41
	8/2/2023	4,175	$111.46	$465,348.84

8/2/2023	900	$112.59	$101,328.03
8/2/2023	200	$113.68	$22,735.00
8/16/2023	1,600	$95.70	$153,124.00
8/16/2023	2,900	$96.44	$279,672.23
8/16/2023	1,200	$98.07	$117,678.96
8/16/2023	4,000	$98.82	$395,288.80
8/16/2023	300	$99.50	$29,850.00
8/23/2023	311	$112.61	$35,022.21
8/23/2023	854	$113.83	$97,214.58
8/23/2023	3,657	$115.16	$421,124.76
8/23/2023	9,878	$115.84	$1,144,312.96
8/23/2023	300	$116.46	$34,938.00
8/30/2023	5,847	$114.64	$670,306.51
8/30/2023	4,717	$115.43	$544,460.20
8/30/2023	4,336	$116.57	$505,463.13
8/30/2023	100	$117.21	$11,721.00
9/6/2023	9,011	$107.27	$966,608.17
9/6/2023	5,689	$108.07	$614,811.37
9/6/2023	300	$108.91	$32,673.99
9/13/2023	4,281	$108.21	$463,229.46
9/13/2023	4,174	$108.77	$453,992.21
9/13/2023	1,400	$110.26	$154,363.02
9/13/2023	3,895	$111.23	$433,243.19
9/13/2023	900	$112.17	$100,956.96
9/13/2023	250	$113.22	$28,305.00
9/13/2023	100	$114.32	$11,432.00
9/20/2023	4,614	$103.87	$479,264.95
9/20/2023	9,380	$105.06	$985,421.53
9/20/2023	1,006	$105.77	$106,403.61
9/27/2023	5,204	$98.46	$512,367.11
9/27/2023	4,596	$99.49	$457,245.47
9/27/2023	200	$100.17	$20,033.00
10/4/2023	1,030	$100.02	$103,018.13
10/4/2023	1,800	$100.94	$181,690.02
10/4/2023	2,700	$102.03	$275,485.59
10/4/2023	5,604	$103.22	$578,445.44
10/4/2023	3,866	$104.04	$402,206.27
10/11/2023	8,700	$102.88	$895,054.26
10/11/2023	5,700	$103.76	$591,420.60
10/11/2023	500	$104.82	$52,408.00
10/11/2023	100	$105.58	$10,558.00
10/25/2023	6,500	$76.73	$498,733.95
10/25/2023	3,100	$77.34	$239,753.69
10/25/2023	400	$78.42	$31,366.00
11/1/2023	1,900	$75.30	$143,066.01
11/1/2023	8,100	$76.17	$616,965.66
3/13/2024	6,281	$106.60	$669,526.96
3/13/2024	2,300	$107.66	$247,616.85

3/13/2024	600	$108.52	$65,109.00
3/13/2024	412	$109.50	$45,113.01
3/13/2024	3,803	$110.80	$421,372.78
3/13/2024	1,404	$111.69	$156,805.88
3/13/2024	200	$112.44	$22,487.00
3/20/2024	2,113	$101.05	$213,514.42
3/20/2024	7,109	$102.15	$726,158.76
3/20/2024	5,778	$103.18	$596,146.88
3/27/2024	1,817	$105.73	$192,105.78
3/27/2024	1,100	$106.71	$117,376.27
3/27/2024	1,466	$107.79	$158,019.85
3/27/2024	3,100	$109.09	$338,175.59
3/27/2024	4,544	$110.24	$500,931.01
3/27/2024	2,973	$110.75	$329,255.59
4/3/2024	200	$97.47	$19,494.00
4/3/2024	1,499	$99.40	$149,000.00
4/3/2024	3,167	$100.66	$318,775.02
4/3/2024	3,832	$101.33	$388,288.90
4/3/2024	3,500	$102.64	$359,251.55
4/3/2024	2,702	$103.64	$280,043.66
4/3/2024	100	$104.15	$10,415.00
4/10/2024	6,351	$106.59	$676,981.67
4/10/2024	7,512	$107.31	$806,136.01
4/10/2024	748	$108.56	$81,205.20
4/10/2024	389	$109.36	$42,542.13
4/17/2024	8,243	$103.10	$849,839.29
4/17/2024	6,475	$103.69	$671,397.93
4/17/2024	282	$104.49	$29,466.07
4/24/2024	3,926	$107.16	$420,699.56
4/24/2024	5,821	$108.30	$630,388.11
4/24/2024	4,153	$109.04	$452,847.27
4/24/2024	1,100	$109.91	$120,901.00
5/1/2024	3,982	$109.70	$436,815.05
5/1/2024	4,572	$110.42	$504,859.90
5/1/2024	4,246	$111.55	$473,649.79
5/1/2024	1,500	$112.77	$169,150.95
5/1/2024	700	$113.40	$79,379.02
5/8/2024	2,000	$120.37	$240,741.00
5/8/2024	5,004	$121.59	$608,416.34
5/8/2024	7,996	$122.07	$976,062.92
5/15/2024	4,488	$125.53	$563,356.65
5/15/2024	2,001	$126.62	$253,368.22
5/15/2024	2,600	$127.71	$332,036.38
5/15/2024	5,711	$128.75	$735,271.83
5/15/2024	200	$129.15	$25,830.00
5/22/2024	100	$142.95	$14,295.00
5/22/2024	200	$144.40	$28,879.00
5/22/2024	100	$145.03	$14,503.00

5/22/2024	300	$147.06	$44,118.99
5/22/2024	600	$148.21	$88,924.02
5/22/2024	300	$149.45	$44,835.99
5/22/2024	400	$150.60	$60,238.00
5/22/2024	700	$151.73	$106,213.03
5/22/2024	800	$152.92	$122,336.00
5/22/2024	200	$153.84	$30,768.00
5/22/2024	600	$155.66	$93,396.00
5/22/2024	1,802	$157.41	$283,655.88
5/22/2024	1,923	$158.25	$304,320.33
5/22/2024	2,200	$159.57	$351,050.26
5/22/2024	825	$160.24	$132,194.29
5/22/2024	1,005	$162.19	$163,002.76
5/22/2024	2,223	$163.02	$362,401.46
5/22/2024	625	$163.92	$102,450.75
5/22/2024	97	$164.67	$15,972.99
5/29/2024	1,000	$141.01	$141,010.00
5/29/2024	3,013	$141.73	$427,017.43
5/29/2024	1,100	$142.82	$157,102.00
5/29/2024	1,500	$143.94	$215,913.00
5/29/2024	2,400	$144.99	$347,965.92
5/29/2024	5,581	$146.02	$814,936.50
5/29/2024	2,229	$146.82	$327,261.11
5/29/2024	3,177	$148.06	$470,378.68
6/5/2024	900	$145.91	$131,322.96
6/5/2024	700	$147.78	$103,442.78
6/5/2024	1,800	$148.57	$267,427.80
6/5/2024	300	$149.35	$44,805.00
6/5/2024	2,840	$151.07	$429,032.84
6/5/2024	3,902	$151.76	$592,172.20
6/5/2024	2,437	$152.87	$372,532.98
6/5/2024	400	$153.71	$61,484.00
6/5/2024	1,721	$154.86	$266,510.10
6/11/2024	163,649	$148.29	$24,268,230.27
6/11/2024	31,531	$148.29	$4,675,870.73
6/11/2024	6,420	$149.40	$959,172.40
6/11/2024	1,232	$149.40	$184,065.48
6/12/2024	700	$142.97	$100,078.72
6/12/2024	408	$144.46	$58,940.46
6/12/2024	1,263	$145.57	$183,860.97
6/12/2024	3,031	$146.55	$444,187.90
6/12/2024	6,397	$147.55	$943,876.07
6/12/2024	1,601	$148.61	$237,929.41
6/12/2024	1,400	$149.39	$209,149.78
6/12/2024	200	$150.24	$30,048.00
6/18/2024	1,700	$132.22	$224,781.65
6/18/2024	6,160	$133.26	$820,887.14
6/18/2024	6,840	$134.09	$917,197.49

	6/18/2024	200	$135.02	$27,003.00
	6/18/2024	100	$136.92	$13,692.00
		797,832		**$103,702,339.72**
HOGE Current President	6/15/2023	15,000	$125.93	$1,888,950.00
	7/17/2023	15,000	$120.60	$1,809,000.00
	8/17/2023	15,000	$100.00	$1,500,000.00
	9/15/2023	15,000	$112.99	$1,694,850.00
	12/27/2023	45,000	$100.01	$4,500,450.00
	1/16/2024	15,000	$103.90	$1,558,500.00
	2/22/2024	15,000	$100.00	$1,500,000.00
	3/15/2024	15,000	$103.17	$1,547,550.00
	4/15/2024	15,000	$105.02	$1,575,300.00
	5/15/2024	15,000	$127.49	$1,912,350.00
	6/17/2024	15,000	$138.16	$2,072,400.00
		195,000		**$21,559,350.00**
		2,859,987		**$399,091,690.07**

INDIVIDUAL DEFENDANTS CAUSE MODERNA TO REPURCHASE ITS OWN STOCK AT INFLATED PRICES

83. In breach of their fiduciary duties to Moderna, and in violation of section 10(b) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder, the Director Defendants caused or approved of the Company's repurchase of over 31.3 million shares of its stock at artificially inflated prices. From March 1, 2023 through May 31, 2023, Moderna paid over $1.1 billion to repurchase its stock for an average $143.12 per share. As the Company's stock was actually worth only $115.95 per share, the price at which it was trading when the market closed on July 1, 2024, the Company overpaid for repurchases of its own stock by over $218.6 million in total. Moderna made the following repurchases:

	Period	Repurchased Shares	Average Price Per Share	Weighted Average Calculation	Approximate Aggregate Cost
	March 1 - March 31, 2023	3,618,461	$145.31	$65.33	$525,798,568
	April 1 - April 30, 2023	2,702,957	$146.71	$49.27	$396,550,821
	May 1 - May 31, 2023	1,727,343	$132.90	$28.52	$229,563,885

Total:		**8,048,761.0**	**$143.12**		**$1,151,913,274**

84. Repurchasing company stock makes sense when the stock is undervalued with expectations that the stock will be valued higher in the future. In fact, a repurchase is a statement to the market that the Company's stock at its current price is undervalued. In such instances, the Company will receive a high internal rate of return on its purchases. A negative rate of return for a mature Company like Moderna means that the investment loses money and the money is better used in another way. As reflected in Moderna's May 31, 2024 press release and June 26, 2024 presentation to the CDC's ACIP, the Board was well aware of the poor, and even negative, rate of return it would receive for the repurchases it made. Nevertheless, the Individual Defendants caused Moderna to repurchase the stock anyway. Making the timing of the repurchase particularly suspicious, at the same time the Board caused Moderna to repurchase Company stock, the Board members themselves, including defendants Bancel and Afeyan, sold their stock on insider information at inflated prices.

DAMAGES TO MODERNA

85. As a result of the Individual Defendants' improprieties, Moderna disseminated improper, public statements concerning mRNA-1345's true efficacy rate. These improper statements have devastated Moderna's credibility as reflected by the Company's $3.4 billion, or 5.9%, market capitalization loss when the truth began to emerge. When the truth was fully revealed, the Company's credibility was further devastated by an $8.3 billion, or 15.73%, market capitalization loss.

86. Moderna's performance issues also damaged its reputation within the business community and in the capital markets. In addition to price, Moderna's current and potential investors consider a company's trustworthiness, stability, and ability to accurate describe its

business operations. Investors are less likely to invest in Moderna if it is misleading the public about its vaccine's efficacy rates. Moderna's ability to raise equity capital or debt on favorable terms in the future is now impaired. In addition, the Company stands to incur higher marginal costs of capital and debt because the improper statements and misleading projections disseminated by the Individual Defendants have materially increased the perceived risks of investing in and lending money to the Company.

87. Further, as a direct and proximate result of the Individual Defendants' actions, Moderna has expended, and will continue to expend, significant sums of money. Such expenditures include, but are not limited to:

(a) $218.6 million, the excessive sum paid to repurchase Moderna stock;

(b) costs incurred from defending and paying any settlement in the Securities Class Action for violations of federal securities laws;

(c) costs incurred from any internal investigations; and

(d) costs incurred from compensation and benefits paid to the defendants who have breached their duties to the Company.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

88. Plaintiff brings this action derivatively in the right and for the benefit of Moderna to redress injuries suffered, and to be suffered, by the Company as a direct result of violations of securities law, breach of fiduciary duty, waste of corporate assets, and unjust enrichment, as well as the aiding and abetting thereof, by the Individual Defendants. Moderna is named as a nominal defendant solely in a derivative capacity.

89. Plaintiff will adequately and fairly represent the interests of the Company in enforcing and prosecuting its rights.

90. Plaintiff was a stockholder of Moderna at the time of the wrongdoing complained of, has continuously been a stockholder since that time, and is a current Moderna stockholder.

91. The current Board of Moderna consists of the following nine individuals: defendants Bancel, Afeyan, Horning, Nabel, Nader, Sagan, and Tallett along with non-defendants David M. Rubenstein and Abbas Hussain. Plaintiff has not made any demand on the Board to institute this action because such a demand would be a futile, wasteful, and useless act, as set forth below.

92. Defendants Bancel and Afeyan disposed of their personally held Moderna stock at artificially inflated prices based on their knowledge of material, nonpublic information. Accordingly, defendants Bancel and Afeyan are both interested in this action because defendants Bancel and Afeyan received a material personal benefit and face a substantial likelihood of liability for insider trading, excusing a demand.

93. Defendants Bancel, Afeyan, Horning, Nabel, Nader, Sagan, and Tallett face a substantial likelihood of liability for violations of section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder for causing Moderna to repurchase $1.1 billion in shares of its own common stock at prices that were artificially inflated due to the Individual Defendants' false or misleading statements.

94. As discussed above, defendants Bancel, Afeyan, Horning, Nabel, Nader, Sagan, and Tallett directly made the improper statements alleged in the 2023 Proxy and 2024 Proxy. It is against public policy to indemnify individuals for violations of section 14(a) of the Exchange Act. Accordingly, an indemnification provided by the Company to defendants Bancel, Afeyan, Horning, Nabel, Nader, Sagan, and Tallett does not protect them for violations of section 14(a) in the 2023 and 2024 Proxies. Accordingly, defendants Bancel, Afeyan, Horning, Nabel, Nader,

Sagan, and Tallett face substantial likelihood of liability for violations of section 14(a) of the Exchange Act, excusing demand.

95. Defendants Bancel and Afeyan made additional improper statements alleged herein in Moderna's public filings with the SEC and during earnings calls. These defendants knew or were reckless in not knowing: (i) that mRNA-1345's vaccine efficacy rates were lower than what was publicized; (ii) that a repurchase signaled to the market the Company's stock price was undervalued while, in truth, it was artificially inflated; and (iii) as a result, the Company's disclosures were improper; and the Individual Defendants' statements about Moderna's business, operations, and prospects were improper or lacked a reasonable basis. In making these improper and misleading statements and omissions of material fact, defendants breached their duties. Accordingly, defendants Bancel, Afeyan, Horning, Nabel, Nader, Sagan, and Tallett face a substantial likelihood of liability for their breach of fiduciary duties, making any demand upon them futile.

96. Defendants Afeyan, Nabel, Nader, and Horning, as members of the Science and Technology Committee and Product Development Committee, failed to adhere to the Science and Technology Committee and Product Development Committee Charters. Defendants Afeyan, Nabel, Nader, and Horning were responsible for overseeing the Company's mRNA platform and overseeing risks to Moderna's development program, including the risks associated with product development programs. As a result, they either knew or should have known that mRNA-1345's disclosed efficacy rates were materially false and misleading.

97. Defendants Sagan and Tallett, as members of the Audit Committee, failed to adhere to the Audit Committee Charter. Specifically, these defendants were responsible for ensuring the validity of the Company's disclosures. Further, the Audit Committee Defendants signed the Audit

Report in the 2024 Proxy which falsely assured investors that the Company's risks were being adequately managed while investors approved the proposal to limit Moderna officers' liability. The Audit Committee Defendants reviewed and approved the improper statements. The Audit Committee's Charter provides that the Audit Committee is responsible for compliance with legal and regulatory requirements. Thus, the Audit Committee Defendants were responsible for knowingly or recklessly allowing the improper statements related to the Company's disclosure controls. Moreover, the Audit Committee Defendants reviewed and approved the improper press releases made to the public. Despite their knowledge or reckless disregard, the Audit Committee Defendants caused these improper statements. Accordingly, the Audit Committee Defendants breached their fiduciary duty of loyalty because they participated in the wrongdoing described herein. Thus, the Audit Committee Defendants face a substantial likelihood of liability for their breach of fiduciary duties so any demand upon them is futile.

98. The principal professional occupation of defendant Bancel is his employment with Moderna, pursuant to which he has received and continues to receive substantial monetary compensation and other benefits as alleged above. Accordingly, defendant Bancel lacks independence from the other members of the Board due to his interest in maintaining his executive position at Moderna. Moderna paid defendant Bancel the following compensation as an executive:

Year	Salary	Non-Equity Incentive Plan Compensation	Stock Awards	Option Awards	All Other Compensation	Total
2023	$1,563,462	$1,913,625	$3,129,194	$9,387,713	$1,074,520	$17,068,514

99. Accordingly, defendant Bancel is incapable of impartially considering a demand to commence and vigorously prosecute this action because he has an interest in maintaining his principal occupation and the substantial compensation he receives in connection with that occupation. Demand is futile as to defendant Bancel.

100. Defendants Afeyan's, Langer's, Bancel's, Berenson's, Nabel's, Hoge's, and Tallett's business relationships are so intertwined they are unable to independently consider whether to sue each other. Specifically, there is a structural bias within the organization that precludes defendants Afeyan, Langer, Bancel, Berenson, Nabel, Hoge, and Tallett from bringing claims against each other.

101. Defendant Afeyan is one of the Co-Founders of Moderna along with defendant Langer. As such, defendant Afeyan is irreconcilably conflicted and could not consider a demand to sue those who have helped build and run the Company he founded. In addition, between 2015 and 2019, defendants Afeyan and Langer both served as directors of Rubius Therapuetics, Inc.

102. Defendants Afeyan, Bancel, and Berenson are also incapable of considering a demand to sue the Individual Defendants as a result of their long-standing professional relationships. Specifically, defendant Afeyan founded, and serves as Managing Partner and CEO, of Flagship Pioneering, Inc. ("Flagship Pioneering"). Meanwhile, defendant Berenson serves as a Managing Partner of Flagship Pioneering, and defendant Bancel serves as a Venture Partner of Flagship Pioneering. Additionally, defendant Afeyan's relationship with defendant Berenson is strengthened from their concurrent directorships on Seres Therapeutics, Inc. ("Seres Therapeutics"). Defendant Afeyan served as a director of Seres Therapeutics from 2012 through to 2020 while defendant Berenson has served as a director of Seres Therapeutics since 2019. Flagship Pioneering is currently an investor in Seres Therapeutics.

103. Defendants Afeyan, Bancel, Nabel, and Langer are also incapable of considering a demand to sue each other. Defendants Afeyan, Bancel, Nabel and Langer currently serve together as elected members of the National Academy of Sciences.

104. Defendants Afeyan and Hoge served together on Axcella Health Inc.'s ("Axcella") board of directors from 2014 through 2018. Notably, Flagship Pioneering was a founding investor in Axcella in 2008 (f/k/a Pronutria Biosciences, Inc.), and invested a total of $41.8 million in connection with Axcella's Series A, B, C, and E rounds of private funding. Flagship Pioneering remained an investor in Axcella through at least October 31, 2023, at which time it owned a total of over 1.17 million shares (or 39.7% of Axcella's outstanding stock).

105. Defendants Tallett and Bancel could not consider a demand to sue one another as a result of their long-standing professional relationship, starting in at least 2013. Both defendants Tallett and Bancel concurrently served as directors of Qiagen N.V. ("Qiagen") with defendant Tallett serving on Qiagen's board of directors since 2011 and defendant Bancel serving on Qiagen's board of directors from 2013 through to 2021. As a result, defendants Afeyan, Langer, Bancel, Berenson, Nabel, Hoge, and Tallett cannot consider a demand to sue each other given their professional relationships.

106. Further, defendant Bancel is a defendant in the Securities Class Action and therefore cannot impartially consider whether to bring this derivative action that will expose himself and the Company to liability in the Securities Class Action. Thus, demand upon him is futile.

107. Any suit by the current directors of Moderna to remedy these wrongs would expose defendants Bancel, Mock, and Hoge and the Company to liability for violations of the federal securities laws in the pending Securities Class Action, and would result in civil actions being filed against one or more of the other Individual Defendants. The Securities Class Action alleges violations of sections 10(b) and 20(a) of the Exchange Act. If the Board elects for the Company to press forward with its right of action against defendants Bancel, Mock, and Hoge in this action,

then Moderna's efforts would compromise its defense of the Securities Class Action. Accordingly, demand on the Board is excused.

108. Plaintiff has not made any demand on the other stockholders of Moderna to institute this action since such demand would be a futile and useless act.

COUNT I

Against the Individual Defendants for Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder

109. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

110. During the period of wrongdoing, the Individual Defendants disseminated or approved false or misleading statements about Moderna, which they knew or recklessly disregarded were false or misleading and were intended to deceive, manipulate, or defraud. Those false or misleading statements and defendants' course of conduct artificially inflated the price of the Company's stock.

111. While the price of the Company's common stock was inflated due to the false and misleading statements made by the Individual Defendants, the Director Defendants caused the Company to repurchase shares of its own common stock at prices that were artificially inflated due to defendants' false or misleading statements. The Director Defendants engaged in a scheme to defraud Moderna by causing the Company to repurchase $1.1 billion in shares of Moderna stock at artificially inflated prices.

112. The Individual Defendants violated section 10(b) of the Exchange Act and SEC Rule 10b-5 in that they: (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material facts or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engaged

in acts, practices, and a course of business that operated as a fraud or deceit upon Moderna in connection with the Company's purchases of Moderna's stock during the period of wrongdoing.

113. The Individual Defendants, individually and collectively, directly and indirectly, by the use of means or instrumentalities of interstate commerce or of the mail: (i) engaged and participated in a continuous course of conduct that operated as a fraud and deceit upon the Company; (ii) made various false or misleading statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; (iii) made the above statements intentionally or with a severely reckless disregard for the truth; and (iv) employed devices, and artifices to defraud in connection with the purchase and sale of Moderna stock, which were intended to, and did: (a) deceive Moderna and its stockholders regarding, among other things, mRNA-1345's efficacy rate; (b) artificially inflate and maintain the market price of Moderna stock; and (c) cause Moderna to purchase the Company's stock at artificially inflated prices and suffer losses when the true facts became known. Throughout the period of wrongdoing, defendants were in possession of material, nonpublic information regarding the above.

114. The Individual Defendants were among the senior management and the directors of the Company, and were therefore directly responsible for, and are liable for, all improper statements made during the period of wrongdoing, as alleged above.

115. As described above, the Individual Defendants acted with scienter throughout the period of wrongdoing, in that they acted either with intent to deceive, manipulate, or defraud, or with severe recklessness. The misstatements and omissions of material facts set forth in this Complaint were either known to the Individual Defendants or were so obvious that defendants should have been aware of them. Throughout the period of wrongdoing, defendants also had a

duty to disclose new information that came to their attention and rendered their prior statements to the market materially false or misleading.

116. The Individual Defendants' false or misleading statements and omissions were made in connection with the purchase or sale of the Company's stock, both by the Company itself and by the Insider Selling Defendants.

117. As a result of the Individual Defendants' misconduct, Moderna has and will suffer damages in that it paid artificially inflated prices for its own common stock and suffered losses when the previously undisclosed facts relating to the wrongdoing was disclosed.

118. Moderna would not have purchased these securities at the prices it paid, or at all, but for the artificial inflation in the Company's stock price caused by the Individual Defendants' false or misleading statements.

119. As a direct and proximate result of the Individual Defendants' wrongful conduct, the Company suffered damages in connection with its purchases of Moderna stock during the period of wrongdoing. By reason of such conduct, defendants are liable to the Company pursuant to section 10(b) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder.

COUNT II

Against the Individual Defendants for Violation of Section 14(a) of the Exchange Act and SEC Rule 14a-9 Promulgated Thereunder

120. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

121. The Individual Defendants issued, caused to be issued, and participated in the issuance of materially false and misleading statements to stockholders that were contained in the Company's 2024 Proxy. The 2024 Proxy contained a recommendation from the Board to the

Company's stockholders that they vote on the proposal to amend Moderna's Certificate of Incorporation to limit the liability of Moderna's officers.

122. The 2024 Proxy misrepresented material information, in particular, the standards for liability against officers.

123. The Individual Defendants were at least negligent in filing the 2024 Proxy with these materially false and misleading statements.

124. The false and misleading statements in the 2024 Proxy are material in that a reasonable stockholder would consider them important in deciding how to vote on whether to approve of the amendment. In addition, a reasonable investor would view a full and accurate disclosure as significantly altering the "total mix" of information made available in the 2024 Proxy and in other information reasonably available to stockholders.

125. By reason of the foregoing, the Individual Defendants have violated section 14(a) of the Exchange Act and SEC Rule 14a-9(a) promulgated thereunder.

126. If not for the materially misleading 2024 Proxy, stockholders would not have voted on and approved the amendment.

COUNT III

Against the Individual Defendants for Breach of Fiduciary Duty

127. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

128. The Individual Defendants owed and owe Moderna fiduciary obligations. By reason of their fiduciary relationships, the Individual Defendants owed and owe the Company the highest obligation of care and loyalty.

129. The Individual Defendants and each of them, violated and breached their fiduciary duties. More specifically, the Individual Defendants violated their duties by issuing false and misleading statements regarding mRNA-1345 which caused the Company's stock price to be artificially inflated while simultaneously repurchasing Moderna stock and in the Insider Selling Defendants' case, selling Company stock.

130. The Officer Defendants either knew, were reckless, or were grossly negligent in disregarding the statements concerning mRNA-1345's efficacy rate. The Officer Defendants either knew, were reckless, or were grossly negligent in not knowing mRNA-1345's true efficacy rate. Accordingly, the Officer Defendants breached their duty of care and loyalty to the Company.

131. The Director Defendants, as directors of the Company, owed Moderna the highest duty of loyalty. These defendants breached their duty of loyalty by recklessly permitting the improper statements concerning mRNA-1345's efficacy rate. The Director Defendants knew or were reckless in not knowing mRNA-1345's true efficacy rate. Accordingly, these defendants breached their duty of loyalty to the Company.

132. The Audit Committee Defendants breached their fiduciary duty of loyalty by approving the statements described herein which were made during their tenure on the Audit Committee, which they knew or were reckless in not knowing contained improper statements and omissions. The Audit Committee Defendants completely and utterly failed in their duty of oversight, and failed in their duty to appropriately review public statements concerning mRNA-1345's efficacy, as required by the Audit Committee Charter in effect at the time.

133. The Product Development Committee Defendants and Science and Technology Committee Defendants breached their fiduciary duty of loyalty by approving the statements described herein which were made during their tenure on those committees, which they knew or

were reckless in not knowing contained improper statements and omissions. The Product Development Committee Defendants and Science and Technology Committee Defendants completely and utterly failed in their duty of oversight, and failed in their duty to appropriately review public statements concerning mRNA-1345's efficacy. In particular, the Science and Technology Committee Charter required oversight of the Company's mRNA platform. The Product Development Committee Charter required oversight of risks related to the Company's products, including mRNA-1345.

134. The Insider Selling Defendants breached their duty of loyalty by selling Moderna stock on the basis of the knowledge of the improper information described above before that information was revealed to the Company's stockholders. The information described above was material, nonpublic information concerning the Company's future business prospects. It was a proprietary asset belonging to the Company, which the Insider Selling Defendants used for their own benefit when they sold Moderna common stock.

135. As a direct and proximate result of the Individual Defendants' breaches of their fiduciary obligations, Moderna has sustained significant damages, as alleged herein. As a result of the misconduct alleged herein, these defendants are liable to the Company.

136. Plaintiff, on behalf of Moderna, has no adequate remedy at law.

COUNT IV

Against the Individual Defendants for Waste of Corporate Assets

137. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

138. As a result of the stock repurchases and false and misleading statements, over which the Company failed to properly supervise, the Individual Defendants have caused Moderna to

waste its assets by: (i) paying improper compensation and bonuses to certain of its executive officers and directors that breached their fiduciary duty, and (ii) repurchasing Moderna stock at inflated prices.

139. As a result of the waste of corporate assets, the Individual Defendants are liable to the Company.

140. Plaintiff, on behalf of Moderna, has no adequate remedy at law.

COUNT V

Against the Individual Defendants for Unjust Enrichment

141. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

142. By their wrongful acts and omissions, the Individual Defendants were unjustly enriched at the expense of and to the detriment of Moderna. The Individual Defendants were unjustly enriched as a result of the compensation and director remuneration they received while breaching fiduciary duties owed to the Company.

143. The Insider Selling Defendants sold over $399 million in Moderna stock while in possession of material, nonpublic information that artificially inflated the price of the Company's stock. As a result, the Insider Selling Defendants profited from their misconduct and were unjustly enriched through their exploitation of material and adverse inside information.

144. Plaintiff, as a stockholder and representative of Moderna, seeks restitution from these defendants, and each of them, and seeks an order of this Court disgorging all profits, benefits, and other compensation obtained by these defendants, and each of them, from their wrongful conduct and fiduciary breaches.

145. Plaintiff, on behalf of Moderna, has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of Moderna, demands judgment as follows:

A. Declaring that the Individual Defendants violated sections 10(b) and 14(a) of the Exchange Act, breached their fiduciary duties, wasted corporate assets, and were unjustly enriched;

B. Injunctive relief declaring the stockholder vote approving the amendment to the Certificate of Incorporation limiting officer's liability null and void and rescinding, to the amount already implemented, the amendment;

C. Against all of the defendants and in favor of the Company for the amount of damages sustained by the Company as a result of the defendants' violations of securities laws, breaches of fiduciary duties, waste of corporate assets, and unjust enrichment;

D. Directing Moderna to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect the Company and its stockholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for stockholder vote, resolutions for amendments to the Company's Bylaws or Certificate of Incorporation and taking such other action as may be necessary to place before stockholders for a vote of the following corporate governance policies:

1. a proposal to control insider selling;

2. a proposal to strengthen the Company's oversight of stock repurchases;

3. a proposal to strengthen Moderna's oversight of its disclosure procedures;

4. a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater stockholder input into the policies and guidelines of the Board; and

5. a provision to permit the stockholders of Moderna to nominate at least three candidates for election to the Board;

E. Extraordinary equitable and injunctive relief as permitted by law, equity, and state statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust on, or otherwise restricting the proceeds of defendants' trading activities or their other assets so as to assure that plaintiff on behalf of Moderna has an effective remedy;

F. Awarding to Moderna restitution from defendants, and each of them, and ordering disgorgement of all profits, benefits, and other compensation obtained by the defendants, including all ill-gotten gains from the Insider Selling Defendants;

G. Awarding to plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses;

H. Ratifying all acts capable of being ratified; and

I. Granting such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: November 5, 2024

THE ROSEN LAW FIRM, P.A.

/s/ Joshua Baker
Joshua Baker (BBO #695561)
101 Greenwood Avenue, Suite 400
Jenkintown, Pennsylvania 19046
Telephone: (215) 600-2817
Fax: (212) 202-3827
Email: jbaker@rosenlegal.com

ROBBINS LLP
Brian J. Robbins
Craig W. Smtih
Shane P. Sanders
5060 Shoreham Place, Suite 300

San Diego, CA 92122
Telephone: (619) 525-3990
Fax: (619) 525-3991
E-mail: brobbins@robbinsllp.com
csmith@robbinsllp.com
ssanders@robbinsllp.com

Counsel for Plaintiff

VERIFICATION

I, Evan Levitan, hereby declare as follows:

I am the plaintiff in this action. I have read the verified stockholder derivative complaint. Based upon discussions with and reliance upon my counsel, and as to those facts of which I have personal knowledge, the complaint is true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Signed and Accepted:

Dated: 10/31/2024

Signed by:
2B29AE7BD02945E...

EVAN LEVITAN